Supreme Court, U.S.
FILED
JUN 23 2010
OFFICE OF THE CLERK

No. 09-1421

IN THE
Supreme Court of the United States

RALPH T. BYRD,

Petitioner,

v.

WOLPOFF & ABRAMSON, L.L.P., ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MARYLAND COURT OF SPECIAL APPEALS

BRIEF IN OPPOSITION

THOMAS J. ALTHAUSER
Counsel of Record
SHIRLIE NORRIS LAKE
ECCLESTON AND WOLF, P.C.
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076
(410) 752-7474
lake@eewmd.com

Attorney for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

REASONS FOR DENYING THE PETITION 2

I. Petitioner Was Found in Contempt of the Bankruptcy Court and was Denied a Discharge in Bankruptcy as a Sanction for His Repeated and Serious Misconduct 2

II. Petitioner Was Disbarred by the Maryland Court of Appeals as a Direct Result of His Misconduct in the Bankruptcy Proceedings 4

III. There Are No Grounds for this Court to Accept Certiorari 5

CONCLUSION 7

TABLE OF AUTHORITIES

Cases:

Attorney Grievance Commission v. Byrd,
408 Md. 449 (2009) 4

Graber v. Fuqua, 279 S.W. 3d 608 (2009) 5, 6

Lee v. Keman, 534 U.S. 362, 126 S. Ct. 877 (2002) ... 2

Rules:

Fed. R. Bankr. P. 9011 6

Md. Rule of Prof. Conduct 1.1 4

Md. Rule of Prof. Conduct 1.3 4

Md. Rule of Prof. Conduct 1.4 4

Md. Rule of Prof. Conduct 3.3 4

Md. Rule of Prof. Conduct 3.4 4

Md. Rule of Prof. Conduct 8.4 4

INTRODUCTION

Wolpoff & Abramson, L.L.P., Harry K. Wolpoff, Ronald M. Abramson, Ronald S. Canter, Peroutka & Peroutka, P.A., Gary M. Jamis, Michele R. Gagnon, Scott T. Whiteman and Clifford A. Wilpon, Respondents, are attorneys and law firms sued by Petitioner, Ralph T. Byrd for abuse of process and conspiracy to abuse process.[1] After his Complaint was dismissed by the Circuit Court for Montgomery County, he appealed, and the Maryland Court of Special Appeals affirmed the dismissal. After the Maryland Court of Appeals denied Mr. Byrd's Petition for Writ of Certiorari, he filed a Petition with this Court. In answer to the Petition for Writ of Certiorari, Respondents direct this Court's attention to significant parts of the record omitted from the Petition. Respondents respectfully suggest that this Court, after a review of the entire record, should conclude that there is no reason to review the decision entered by an intermediary Maryland appellate court in this case.

---

[1] Mr. Byrd also sued Fletcher P. Thompson, Assistant Bar Counsel for the Maryland Attorney Grievance Commission ("AGC") and Dennis F. Biennes, an investigator with the AGC. However, the "Questions Presented" in Mr. Byrd's Petition do not relate to his claims against the AGC Defendants, and their counsel has filed a Waiver indicating that no response will be filed on their behalf.

REASONS FOR DENYING THE PETITION

I. PETITIONER WAS FOUND IN CONTEMPT OF THE BANKRUPTCY COURT AND WAS DENIED A DISCHARGE IN BANKRUPTCY AS A SANCTION FOR HIS REPEATED AND SERIOUS MISCONDUCT

Respondent, Ralph T. Byrd, a disbarred Maryland attorney, see, Part III infra, presents two questions for review, both of which focus on alleged misconduct by the Respondents subsequent to the filing of an involuntary bankruptcy petition against Mr. Byrd by his creditor. Petitioner contends that his lawsuit alleging a state law cause of action for abuse of process against the attorneys for his creditors have been permitted to go forward, however given Mr. Byrd's own misconduct in bankruptcy, his contentions have an "Alice-in-Wonderland quality". Lee v. Keman, 534 U.S. 362, 382, 126 S. Ct. 877, 889 (2002).

Mr. Byrd's misconduct was so severe that the Bankruptcy Court cited him for contempt for violating several Bankruptcy Court Orders. See, Case No. 04-35620, United States Bankruptcy Court for the District of Maryland, Docket Entry 676 (Order finding Respondent in contempt) and Docket Entry 677 (Memorandum Opinion finding Respondent in contempt and awarding monetary sanctions against Respondent for violation of the automatic stay and the injunction order for flagrant

violation of the Court's Order)[2]. A further Order of the Bankruptcy Court denied Mr. Byrd's bankruptcy discharge as a sanction for his abuse of the bankruptcy process. (Docket Entry 678).[3]

In finding Mr. Byrd in contempt for suing the Bankruptcy Trustee and his counsel, the Bankruptcy Court found that Mr. Byrd "willfully violated the automatic stay by filing (a state court) Complaint (and) . . . willfully and maliciously violated the automatic stay by filing and serving the (state court) Complaint after the memorandum decision and injunction order were issued."[4] (Docket Entry 677 at p. 30). The award of monetary sanctions against Mr. Byrd, the finding of contempt, and the denial of Mr. Byrd's bankruptcy discharge paint a more accurate picture of the record than what appears in the Petition. This more complete view of the record should lead this Court to conclude that the decision by the Maryland Court of Special Appeals rejecting Mr. Byrd's state common law causes of action alleging misconduct by the Respondents in the bankruptcy should not be reviewed by this Court.

---

[2] This Court can take judicial notice of pleadings and papers filed in Mr. Byrd's bankruptcy. Fed. Rule Evid. 201.

[3] Mr. Byrd's appeal of the Contempt Order and of his Motion to Reconsider that Order was rejected by the United States District Court, which entered an Order affirming the Bankruptcy Court's Order. The Fourth Circuit Court of Appeals later affirmed the Orders. See, Case No. 08-1988, United States Court of Appeals for the Fourth Circuit (unpublished).

[4] The first Complaint filed by Mr. Byrd in the Circuit Court for Montgomery County alleged the same abuse of process claim against the Bankruptcy Trustee and his attorneys as alleged against these Respondents.

II. PETITIONER WAS DISBARRED BY THE MARYLAND COURT OF APPEALS AS A DIRECT RESULT OF HIS MISCONDUCT IN THE BANKRUPTCY COURT PROCEEDINGS

The Petition for Writ of Certiorari represents that Mr. Byrd is "a solo practitioner attorney." ("Parties to the Proceedings"). The Petition does not disclose that the disciplinary proceeding against Mr. Byrd, mentioned throughout the Petition, resulted in his disbarment by the Maryland Court of Appeals on April 14, 2009. See, Attorney Grievance Commission v. Byrd, 408 Md. 449 (2009). The Maryland Court found that Mr. Byrd "commit(ed) perjury when he filed false business reports under oath in the bankruptcy proceeding." Id. at 483. The Court also relied on factual findings that Mr. Byrd "knowing and intentionally contravened the Bankruptcy Court's orders (and) . . . made false statements to the Bankruptcy Court and the trustee."

The Maryland Court of Appeals summarized its conclusion that Mr. Byrd's conduct warranted disbarment by referring to Mr. Byrd's numerous violations of Maryland's Rules of Professional Conduct explaining that "those violations do not stand alone. In connection with the filing of false reports in the bankruptcy proceeding, Respondent (Byrd) also violated MRPC 8.4(d). Furthermore, Respondent repeated violated MRPC 1.1, 1.3, 1.4(a)(2) and 3.3(a)(1) in connection with his handling of the cases discussed . . . (t)hose violations, like (Byrd's) violations of MRPC 8.4(d) and 3.4(c)

added further support for the sanction of disbarment."[5]

III. THERE ARE NO GROUNDS FOR THIS COURT TO ACCEPT CERTIORARI

The sole basis upon which Petitioner claims that this Court should grant certiorari is that "Maryland's Court of last resort" has decided an issue related to the Bankruptcy Code in a way that conflicts with the "reported decision of at least one other state court of last resort." Petition at p. 19. Later in the Petition, Mr. Byrd identifies this case as Graber v. Fuqua, 279 S.W.3d 608 (2009), a case decided by the Texas Supreme Court. Petition at p. 31. However, this argument fails for two reasons. First, the issue upon which Mr. Byrd seeks certiorari was not decided by a Maryland Court of "last resort" as represented in the Petition, but, rather, by the Maryland Court of Special Appeals, Maryland's intermediate appellate Court, in an unpublished Opinion. Secondly, the decision of the Texas Supreme Court in *Graber* is not in conflict with the unreported decision of Maryland's intermediate Court in this case.

The *Graber* Court merely found that federal bankruptcy law did not preempt an adversary proceeding brought in connection with a bankruptcy. In reaching its decision, the Court distinguished an adversary proceeding from "custom-built" provisions

---

[5] Although Mr. Byrd filed a Motion for Reconsideration of the disbarment decision which was denied by the Court of Appeals on June 5, 2009, Mr. Byrd has also been disbarred by the U.S. Court of Appeals for the fourth Circuit.

of the Bankruptcy Code, including the provisions governing involuntary petitions. Specifically, the Court noted that although preemption of state law claims applies to such "custom-built" bankruptcy procedures, it does not apply to areas of the bankruptcy law which simply mirror existing federal law, such as adversary proceedings and Bankruptcy Rule 9011. 279 S.W.3d at 615. Accordingly, because all of the actions upon which Mr. Byrd based his state court claim for abuse of process were taken in connection with the involuntary bankruptcy proceeding, a "custom built" procedure, and not in connection with an adversary proceeding, the Texas Court's decision in *Graber* does not, in any way, conflict with the unpublished Opinion of the Maryland Court of Special Appeals in this case.

The Maryland Court of Special Appeals properly affirmed the dismissal of Mr. Byrd's Complaint by the lower Court based upon established principles of both Maryland state law and U.S. bankruptcy law. The Maryland Court of Appeals properly denied certiorari to Mr. Byrd, and he has not set forth any legitimate basis upon which this Court should grant certiorari to review the unpublished state court decision.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

SHIRLIE NORRIS LAKE
Counsel of Record
ECCLESTON AND WOLF, P.C.
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076
(410) 752-7474
lake@ewmd.com

Attorney for Respondents